

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Eric D. Hoiem, Revocable Trust,

Petitioner-Appellant,

v.

Dickinson County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-30-0803
Parcel No. 03-29-477-011**

On September 10, 2010, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Eric D. Hoiem, Revocable Trust (Hoiem Trust), was represented by Eric Hoiem and submitted evidence in support of its petition. The Dickinson County Board of Review designated Assistant County Attorney Lonnie Saunders as its legal representative. Assessor Patricia Dodds represented the Board of Review at hearing. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

The Hoiem Trust is the owner of a residentially classified property located on Big Spirit Lake at 13900 240th Avenue, Orleans, Iowa. The property consists of a 35,474 square foot site improved with a two-story, single-family residence. The dwelling was built in 1915, has 2255 square-feet of living area, and a partial unfinished basement. Additional improvements include a 448 square foot enclosed porch, and a 22 foot by 28 foot detached garage. The site is rectangular shaped with an estimated 100 feet of lake-shore frontage.

The property has a January 1, 2009, assessment of \$723,400 representing \$570,300 in the land value and \$153,100 in the improvement value.

The Hoiien Trust protested to the Dickinson County Board of Review regarding the 2009 assessment for this parcel. The petition form claimed that there has been a change downward in value since the last assessment under sections 441.37(1) and 441.35. Eric Hoiien also submitted a letter with the protest dated May 1, 2009. The plain language of this letter was based on the ground assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), stating that the property is over-assessed by "no less than \$123,400. The Board denied the protest.

The Hoiien Trust then appealed to this Board, reasserting its claim of downward change. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment.

Eric Hoiien testified on behalf of the Hoiien Trust. Mr. Hoiien provided a letter to this Board dated August 30, 2010, which asserts that the subject property is over-assessed. Hoiien bases this belief on sales that occurred in 2010 on Big Spirit Lake. Hoiien also states in this August letter the property immediately adjacent to the north of the subject property at 13888 240th Avenue, is situated on a 6 foot deeper and 10 foot wider lot, and has similar improvements built in the same year as the subject property; but it is assessed for \$632,900.

Mr. Hoiien, who is also a licensed real estate agent, offered a Comparative Market Analysis on the subject property. Exhibit 2 provides a comparison of the subject property to three properties selected by Mr. Hoiien as comparable. One of the three properties sold in May of 2010 and the other two sold in August of 2010. Regardless of the comparability of these properties to the subject property, we do not consider them relevant to determine a January 1, 2009, assessment. Likewise, we

find Exhibit 8, which shows all closed sales on Big Spirit Lake between August 2009 and August 2010, to have no relevance to a January 1, 2009, assessment.

Mr. Hoien also provided a print-out from the Dickinson assessor's office for the neighboring property, 13888 240th Avenue. He asserts the improvements are similar to the subject property, and the site is slightly larger; he questioned why this property would be assessed for less than the subject property. Dickinson County Assessor Patricia Dodds testified that this property had been similarly assessed to the Hoein Trust, however the Board of Review reduced the 2009 assessment when protested. According to Dodds she believes the assessment was reduced in part due to the owner being an elderly lady. As such, she acknowledges that while the assessments are different, the difference is the result of a Board of Review decision, not differences in assessment practices.

The Board of Review submitted Exhibit G which has 20 pages of listings on Big Spirit Lake in 2008. We find this Exhibit to offer minimal relevance as it is simply an aggregate of all the listings on Big Spirit Lake in 2008 and there is no analysis for comparability of any of the properties to the subject property.

Similarly, Exhibit H submitted by the Board of Review is a spreadsheet which offers sales and ratios on Big Spirit Lake for 2007 and 2008. The spreadsheet provides the parcel number, address, sale amount, 2009 (assessment) value, sales ratio and sales date. We note the 2007 sales are compared to a 2009 assessment value which would not appropriately reflect a ratio analysis for 2009. We note that while the assessor's purpose was perhaps to show, as a whole, her assessments are at market value, the ratio analysis is irrelevant for showing the market value of the subject property. There is no information or testimony presented reflecting the comparability of these properties to the subject property for determining market value. We do not give this spreadsheet any consideration for a market value claim.

Based upon the foregoing, the Appeal Board finds that the Hoein Trust has failed to demonstrate its property is assessed for greater than market value, or the correct value.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

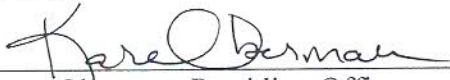
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277

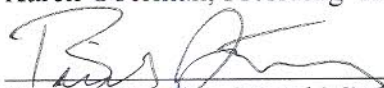
(Iowa 1995). The Hoiem Trust does not provide this Board with evidence its current assessed valuation is more than authorized by law and also failed to provide substantial evidence of its fair market value, for the January 1, 2009, assessment.

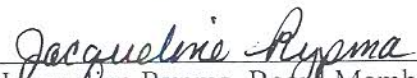
In the opinion of the Appeal Board, the Hoiem Trust did not show what the correct value of its property should be; and the evidence does not support the claim that the property is assessed for more than the value authorized by Iowa Code section 441.21. We, therefore, affirm the assessment of the subject property located at 13900 240th Avenue, Orleans, Iowa, as determined by the Dickinson County Board of Review as of January 1, 2009.

THE APPEAL BOARD ORDERS the assessment of the Eric D. Hoiem Revocable Trust property, located at 13900 240th Avenue, Orleans, Iowa, as of January 1, 2009, set by the Dickinson County Board of Review, is affirmed.

Dated this 18 day of October, 2010


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-18</u> 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature:	